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HIGHWAY LAWS

OF THE

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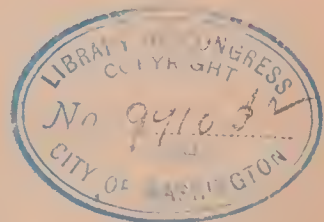
ALL THE LAWS OF IOWA

RELATING TO THE

Powers and Duties of Highway Supervisors,

INCLUDING ALL

AMENDMENTS UP TO 1878, WITH PRACTICAL
FORMS AND PROCEEDINGS.



BURLINGTON, IOWA :

ACRES, BLACKMAR & CO., PUBLISHERS.

1878.

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PUBLISHERS' NOTICE.

Heretofore the Legislature has made provisions for supplying all the laws to the County and Township officers, including Highway Supervisors, but the Seventeenth General Assembly limited the distribution in the townships to Justices of the Peace and Township Clerks—thus depriving Highway Supervisors of their use, without buying them at the rate of fifty cents each.

The publishers hereof have, therefore, at the request of a number of County Auditors, prepared this pamphlet, in which will be found all the laws relating to the powers and duties of Highway Supervisors, together with practical forms for their use, and extracts from Supreme Court rulings, explaining and construing various points otherwise likely to be misconstrued.

It will be noticed that we have given sections 920 to 968, with but few forms or references, as said sections do not apply specifically to the duties of Highway Supervisors; but in all that portion of the remainder, where it is deemed essential, we have endeavored to make their duties as plain as possible, by numerous forms and extracts from the Supreme Court Reports.

Those desiring all the laws relating to the powers and duties of Township Officers, should purchase "HOLMES' TOWNSHIP LAWS of IOWA," which contains all the Township Laws now in force, with some 170 forms for practical use. Published by the undersigned. Price, \$2.00.

ACRES, BLACKMAR & CO.

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HIGHWAYS.

I. ESTABLISHMENT OF HIGHWAYS.

Sub-division 5, of section 45, of the Code, is as follows :

5. The words "highway" and "road" include public bridges, and may be held equivalent to the words "county way," "county road," "common road" and "state road."

SECTION 920. The board of supervisors has the general supervision over the highways in the county, with power to establish and change them as herein provided, and to see that the laws in relation to them are carried into effect.

SEC. 921 Highways hereafter established must be sixty-six feet in width, unless otherwise directed ; but the board of supervisors may, for good reasons, fix a different width, not less than forty feet, and they may be increased or diminished within the limits aforesaid, altered in direction, or discontinued, by pursuing substantially the steps herein prescribed for opening a new highway.

SEC. 922. Any person desiring the establishment, vacation, or alteration of a highway, shall file in the auditor's office of the proper county, a petition in substance as follows :

No. 1.—PETITION TO ESTABLISH, ALTER, OR VACATE A HIGHWAY.

To the Honorable Board of Supervisors of....County :

The undersigned ask that a highway, commencing at [here accurately describe the place of beginning,] and running thence [here describe the course,] and terminating at [here accurately describe the terminus,] be established, vacated, or altered (as the case may be).

Dated....18..

Petitioners' Names.

|

Petitioners' Names.

SECTION 923. Before filing such petition the auditor shall require the petitioner to file in his office a bond, with sureties to be approved by such auditor, conditioned that all expenses growing out of the application will be paid by the obligors in case the contemplated highway is not finally established, altered, or vacated, as asked in the petition.

SECTION 924. If satisfied that the foregoing prerequisites have been complied with, the auditor shall appoint some suitable and disinterested elector of the county a commissioner to examine into the expediency of the proposed highway, alteration, or vacation thereof, and report accordingly.

The establishment of a highway more than sixty-six feet wide is irregular, but not void; and it can be corrected only on appeal or *certiorari*. The defect cannot be cured nor inquired into in collateral proceedings.*

II. DUTIES OF COMMISSIONER TO ESTABLISH HIGHWAYS.

SECTION 925. The commissioner is not confined to the precise matter of the petition, but may inquire and determine whether that or any highway in the vicinity, answering the same purpose and in substance the same, be required; but such highway must not be established through any burying ground which is exempt from execution; nor through any garden, orchard, or ornamental ground contiguous to any dwelling house, so as to cause the removal of any building without the consent of the owner.

SEC. 926. In forming his judgment, he must take into consideration both the public and private convenience, and also the expense of the proposed highway.

SEC. 927. After a general examination, if he shall not be in favor of establishing the proposed highway, he will so report, and no further proceedings shall be had thereon.

SEC. 928. If he deems such establishment expedient, he may proceed at once to lay out the highway as hereinafter directed, and may report accordingly, if the circumstances of the case are such as to enable him to do so, without pursuing the course pointed out in the next section.

SEC. 929. If the precise location of the highway cannot be otherwise given, he must cause the line of the highway to be accurately surveyed and plainly marked out.

SEC. 930. Any commissioner, other than the county surveyor, must be sworn to faithfully and impartially discharge his duty as such commissioner, and, after being thus qualified, he shall have power to swear the assistants employed to a faithful and impartial performance of their respective duties in laying out the highway described in his commission.

SEC. 931. Mile posts must be set up at the end of every mile and the distance marked thereon, and stakes must be set at each change of direction, on which shall be marked the bearing of the new course. Stakes must also be set at the crossing of fences and streams, and at intervals, in the prairie, not exceeding a quarter of a mile each; in the timber, the course must be indicated by trees suitably blazed.

*20 Iowa, 248.

SEC. 932. Bearing trees must, when convenient, be established at each angle and mile post, and the position of the highway relative to the corners of sections, the junction of streams, or any other natural or artificial monument, or conspicuous object, must, as far as convenient, be stated in the field notes and shown on the plat.

SEC. 933. A correct plat of the highway, together with a copy of the field notes of the surveyor, if one has been employed, must be filed as part of the commissioner's report.

SEC. 934. Within thirty days from the day of his appointment, the commissioner must file his report in the auditor's office, and if it be in favor of the establishment of the highway, the auditor must appoint a day, not less than sixty nor more than ninety days distant, when the matter will be acted upon; on or before which day, all objections to the establishment of the highway and claims for damages by reason of the establishment thereof, must be filed with the auditor.

SEC. 935. The time for the commissioner to commence the examination shall be fixed by the auditor, and if he fails to so commence, or to report as prescribed in the preceding section, the auditor may fix another day or extend the time for making such report, or may appoint another commissioner.

Changes in the location of a highway from that described in the petition, made during and in the course of proceeding to lay it out, will be presumed correct in a collateral proceeding; but where the commissioner extended the highway beyond the terminus named in the petition, it was void.* The fixing visible monuments, and the making of field notes and a plat of the road, as provided in sections nine hundred and thirty-one and nine hundred and thirty-two of this chapter, are merely directory, and a failure on the part of the commissioner to comply therewith will not render the proceedings void.†

III. ASSESSMENT OF DAMAGES ON HIGHWAYS.

SECTION. 936. Within twenty days after the day is fixed by the auditor as above provided, a notice shall be served on each owner or occupier of land lying in the proposed highway, or abutting thereon, as shown by the transfer books in the auditor's office, who resides in the county, in the manner provided for the service of original notice in actions at law; and such notice shall be published for four weeks in some newspaper printed in the county, if any such there be, which notice may be in the following form:

No. 2.—NOTICE TO PROPERTY OWNERS.

To all whom it may concern : The commissioner appointed to locate, vacate, or alter (as the case may be) a highway commencing at, in county, running thence [describe in general terms all the points as in the commissioner's report] and terminating at, has

* 15 Iowa, 213.

† 24 Iowa, 367

reported in favor of the establishment, vacation, or alteration thereof, and all objections thereto, or claims for damages, must be filed in the auditor's office on or before noon of the ...day of....18.., or such highway will be established, vacated, or altered (as the case may be) without reference thereto.

.... .County Auditor.

The notice may be served by the sheriff, constable or any other person not an interested party, and the service must be made by reading the notice to each person named therein, or offering to read it, if he neglects or refuses to hear it read, and in either case by delivering him personally a copy of the notice, or if he refuses to receive it, by offering to deliver it.*

If service cannot be made on the parties personally on account of their not being found in the county, then by leaving a copy of the notice at his usual place of residence with some member of the family over fourteen years of age.

Service may also be made by taking an acknowledgment of the service endorsed on the notice, dated and signed by the persons on whom service is to be made.†

The notice must be returned to the auditor on or before the day set for hearing, with the proper return made thereon, which return must be sworn to unless served by an officer, which return may be made in the following form :

No. 3.—RETURN TO NOTICE WHEN SERVED PERSONALLY.

I hereby certify that I served the within notice on the within named [name each person served] by reading the same to each personally, (or offering to read it), and delivering (or offering to deliver) to each of them a true copy thereof, on the.... day of 18 .. in county, Iowa.

Service, \$....; copies, \$....; mileage, \$....

.... .Sheriff or Constable.

When served by copy, the return may be as follows:

No. 4.—RETURN TO NOTICE SERVED BY COPY.

I hereby certify that I served the within notice on the within named [here name the person served by copy] on the day of....18.., by leaving a copy thereof at the dwelling house of [here state whose house] in.... township, county, Iowa, that being the usual place of res-

* Code of 1873, Secs. 2601, 2602, 2603.

† Code of 1873, Sec. 2603.

idence of [here name the person or persons served,] with [here give the name of the person with whom the copy is left] he (or she) being a member of the family over fourteen years of age. The said [here name the person or persons] not being found in....county, Iowa.

Fees, \$....

.... *Sheriff or Constable.*

When practicable, the persons named in the notice may acknowledge service in writing thereon, as follows:

No. 5.—ACCEPTANCE OF SERVICE OF NOTICE.

I (or we) do hereby acknowledge due and legal service of the within notice, this....day of....18..
.....

When service is acknowledged according to form No. 5, neither copies to the parties, nor formal return by the officer or person serving the same, is required.

The reading of the notice, and also the delivering of the copy, may be waived by the parties served, and the fact noted in the return.

When the notice is served by any person not an officer, or when served out of the state, the affidavit of the person serving the same may be as follows:

No. 6.—AFFIDAVIT TO RETURN OF NOTICE TO PROPERTY OWNERS.

State of Iowa, }
.... County, } ss.

I, on oath say that I served the within notice, [here proceed as in the foregoing forms, as the case requires].

Subscribed and sworn to before me by this...day of...18..

.... *Justice of the Peace.*

The return must be in strict compliance with the statute,* and must show the time, manner and place of service, and that a copy was delivered or offered to be delivered to the person served.†

The notice should be published in the paper most likely to give notice to all parties interested; provided more than one such paper is published in the county.

Proof of the publication must be made by the affidavit of the publisher or other competent person knowing the fact.

*1 Green, 346; 10 Iowa, 553; 12 Iowa, 204.

† Code of 1873, §2604; 27 Iowa, 465.

SECTION 937. If no objections or claims for damages are filed on or before noon of the day fixed for filing the same, and the auditor is satisfied the provisions of the preceding section have been complied with, he shall proceed to establish such highway as recommended by the commissioner upon the payment of costs. If such costs are not paid within ten days, the auditor shall report his action in the premises to the board of supervisors at their next session, who may affirm the action of the auditor or establish such highway at the expense of the county.

SEC. 938. If the auditor is satisfied the notice has not been served and published as provided in section nine hundred and thirty-six of this chapter, he shall appoint another day, and cause such notice to be served or published as provided in said section, and thereafter proceed as provided in the preceding section.

SEC. 939. If objections to the establishment of the highway or claims for damages are filed, the further hearing of the application shall stand continued to the next session of the board of supervisors, held after the commissioners appointed to assess damages have reported.

SEC. 940. When claims for damages are filed, and on the day appointed for filing the same, the auditor must appoint three suitable and disinterested electors of the county as appraisers to view the ground on a day fixed by him, and report upon the amount of damages sustained by the claimants ; such report shall be made and filed in the auditor's office within thirty days after the day they are appointed.

SEC. 941. All claims for damages and objections to the establishment, vacation, or alteration of the highway must be in writing, and the statements in the application for damages shall be considered denied in all the subsequent proceedings.

SEC. 942. The auditor shall cause notice of their appointment to be given to each of the appraisers, fixing the hour at which they are to meet at the office of the auditor, or of some justice of the peace therein named.

SEC. 943. If the appraisers are not all present within one hour of the time thus fixed, the auditor or justice, as the case may be, shall fill the vacancy by the appointment of others. The appraisers must be sworn to discharge their duty faithfully and impartially.

SEC. 944. Should the report not be filed in time, or should any other good cause for delay exist, the auditor may postpone the time for final action on the subject, and may, if expedient, appoint other commissioners.

SEC. 945. Should no damages be awarded the applicant therefor, the whole of the cost growing out of his application shall be paid by him.

IV. FINAL ACTION IN THE ESTABLISHMENT, VACATION, OR ALTERATION OF HIGHWAYS.

SECTION 946. When the time for final action arrives, the board of supervisors may hear testimony, receive petitions for and remonstrances against the establishment, vacation, or alteration, as the case may be, of such highway, and may establish, vacate, or alter, or refuse to do so, as in their judgment, founded on the testimony, the public good may require. Said board may increase or diminish the

damages allowed by the appraisers, and may make such establishment, vacation, or alteration, conditioned upon the payment in whole or in part of the damages awarded, or expenses in relation thereto

SEC. 947. In the latter case, a day shall be fixed for the performance of the condition, which must be before the next session of the board, and if the same is not performed by the day thus fixed, the board shall, at such session, make some final and unconditional order in the premises.

SEC. 948. Any order made or action taken in the establishment of a highway, shall be entered in the highway record, distinguishing between those made or taken by the auditor, and those by the board of supervisors.

SEC. 949. After the highway has been finally established, the plat and field notes must be recorded by the auditor, and he shall certify the same to the township clerk, and the township clerk shall certify to and direct the supervisor of highways to have the same opened and worked subject to the provisions of the next section.

SEC. 950. A reasonable time must be allowed to enable the owners of land to erect the necessary fences adjoining the new highway ; and when crops have been planted or sowed before the highway is finally established, the opening thereof shall be delayed until the crop is harvested.

SEC. 951. The rights and interests of minors and insane persons, in relation to the establishment, vacation, and alteration of highways, and all matters connected therewith, are under the control of their guardians.

SEC. 952. All public streets of towns or villages not incorporated, are part of the highway ; and all supervisors of highways, or persons having charge of the same, in their respective districts of such towns or villages, shall work the same as provided by law.

SEC. 953. Such portions of all highways as lie within the limits of any city or incorporated town, shall conform to the direction and grade, and be subject to all regulations of other streets in such town or city.

SEC. 954. Highways or streets shall not be established or opened across the lands reserved by the state for its various institutions lying adjacent thereto, without the express consent of the general assembly.

V. HIGHWAYS ACROSS OR ALONG COUNTY LINES.

SECTION 955. The establishment, vacation, or alteration of a highway, either along or across a county line, may be effected by the concurrent action of the respective boards of supervisors in the mode above prescribed ; except that the auditor of neither county can make the final order in such case. The commissioners in such cases must act in concert, and the highway will not be deemed established, vacated, or altered in either county until it is so in both.

SEC. 956. Hereafter there shall be no distinction between highways heretofore known as state roads and county roads ; both are alike subject to the provisions of this chapter. Highways established by the concurrent action of the board of supervisors of two or more counties, can only be discontinued by the concurrent

action of the board of supervisors of the several counties in which the same may be situated, but such highways shall be treated in all other respects as provided in this title.

VI. HIGHWAYS ESTABLISHED BY CONSENT.

SECTION 957. Highways may be established without the appointment of a commissioner, provided the written consent of all the owners of the land to be used for that purpose be first filed in the auditor's office ; and if it is shown to the satisfaction of the board of supervisors, that the proposed highway is of sufficient public importance to be opened and worked by the public, they shall make an order establishing the same, from which time only shall it be regarded as a highway.

SEC. 958. If a survey for the establishment of the highway named in the preceding section is necessary, the board of supervisors, before ordering such survey, may require the parties asking for the establishment of such highway to pay, or secure the payment of, the expenses of such survey.

VII. APPEALS FROM BOARD OF SUPERVISORS ON ALLOWING OR REJECTING CLAIMS FOR DAMAGES.

SECTION 959. Any applicant for damages claimed to be caused by the establishment of any highway, may appeal from the final decision of the board of supervisors to the circuit court of the county in which the land lies; but notice of such appeal must be served on the county auditor within twenty days after the decision is made. If the highway has been established on condition that the petitioners therefor pay the damages, such notice shall be served on the four persons first named in the petition for the highway, if there are that many who reside in the county.

SEC. 960. An appeal may also be taken by the petitioner for the highway as to amount of damages, if the establishment of the highway has been made conditional upon his paying the damages, by his serving notice of such appeal on the county auditor and applicant for damages within twenty days after the decision of the board of supervisors, and filing a bond in the office of such auditor, with sureties to be approved by him, conditioned for the payment of all costs occasioned by such appeal, unless the appellant fails to recover a more favorable judgment in the circuit court than was allowed him by such board.

SEC. 961. In the cases contemplated in the two preceding sections, the auditor shall, within ten days after the notices aforesaid are served and filed in his office, make out and file in the office of the clerk of said court, a transcript of the papers on file in his office and proceedings of the board in relation to such damages. The claimant for damages shall be plaintiff, and the petitioner for the highway defendant, except the damages have been ordered paid out of the county treasury, in which case the county shall be defendant.

SEC. 962. The amount of damages the claimant is entitled to, shall be ascertained by said circuit court in the same manner as in actions by ordinary proceedings, and the amount so ascertained shall be entered of record, but no judgment shall be rendered therefor. The amount thus ascertained shall be certified by the clerk to the board of supervisors, who shall, thereafter, proceed as if such amount had been by them allowed the claimant as damages.

SEC. 963. If the appeal has been taken by the claimant, the petitioner for the highway, or the county, must pay the costs occasioned by the appeal; but the county shall pay only when the damages have been ordered to be paid out of the county treasury. If the petitioner for the highway appeals, he must pay the costs, unless the claimant recovers a less amount than was allowed him by the board, in which case the costs shall be paid by the claimant. Judgment shall be rendered in accordance with the foregoing provisions.

VIII. LOST FIELD NOTES.

SECTION 964. When by reason of the loss or destruction of the field notes of the original survey, or in cases of defective surveys or record, or in cases of such numerous alterations of any highway since the original survey, that its location cannot be accurately defined by the papers on file in the proper office, the board of supervisors of the proper county may, if they deem it necessary, cause such highway to be resurveyed, platted, and recorded as hereinafter provided.

SEC. 965. A copy of the field notes, together with a plat of any highway surveyed under the provisions of the preceding section, shall be filed in the office of the county auditor, and, thereupon, he shall give public notice by publication in some newspaper published within the county, or, if no paper is published in his county, by posting such notice in five of the most public places in the vicinity of such survey, that such survey has been made and that at some term of the board of supervisors, not less than twenty days from the publication, they will, unless good cause be shown against so doing, approve of such survey and plat, and order them to be recorded as in cases of the original establishment of a public highway.

SEC. 966. In case objection shall be made by any person claiming to be injured by the survey made, the board of supervisors shall have full power to hear and determine upon the matter, and may, if deemed advisable, order a change to be made in the survey. Upon the final determination of the board, or in case no objection be made at the term named in the notice of the survey, they shall approve of the same and cause the field notes and plat of the highway to be recorded as in case of the establishment, or alteration of highways, and thereafter such records shall be received by all courts as conclusive proof of the establishment and existence of such highway, according to such survey and plat.

SEC. 967. If the same has not been heretofore done in any other manner, the county auditor shall, within six months after this code takes effect, cause every highway in his county, the legal existence of which is shown by the records and files of his office, to be platted in a book to be obtained and kept for that purpose, and known as the "highway plat-book." Each township shall be platted separately, on a scale of not less than four inches to the mile, and such auditor shall have all

changes in or additions to the highways legally established, immediately entered upon said plat-book, with appropriate references to the files in which papers relating to the same may be found.

SEC. 968. Within the time aforesaid, the auditor shall furnish to the township clerks a certified copy of said plat-book, so far as the same relates to their respective townships, which shall be carefully preserved in the office of said clerks. The auditor shall notify said clerks of all changes made in the plat-book relative to the highways, so far as the same relate to their townships respectively; on receipt of which, said clerks shall immediately make corresponding changes on the maps in their respective offices.

IX. ESTABLISHMENT OF HIGHWAYS BY DEDICATION AND PRESCRIPTION.

In addition to the statutory provisions relating to the establishment of highways, they may derive their existence from a dedication of the land to public use, and the acceptance thereof to the public; such dedication may be in writing, by parol, or any other acts inconsistent with any other inference,* and it may also be established without proof of an express grant by the owner. Long use by the public, and the acquiescence of the owner therein, are evidence of a dedication; and such right acquired by use by the public, with the knowledge of the owner, becomes perfect in ten years;† but a local or timber road requires much stronger evidence of dedication or prescriptive right than an acknowledged highway which is constantly traveled;‡ and to constitute a highway by prescription, based upon use by the public for the required length of time, with the knowledge and consent of the owner of the soil, there must be an absence of proof that the highway was so used by leave, favor, or mistake.

If it be shown that the apparent consent of the owner was based upon mistake as to the location of the section line on which it was intended the highway should run, no highway by prescription will be gained thereby;§ continued, uninterrupted adverse use by the public, is essential to establish such right.¶

The owner of land, under the belief that a certain highway used by the public was a legally established highway, proposed that if the route of the highway was so changed as to run along the line of his land he would give the right of way; it was accordingly changed and

*27 Iowa, 15; 34 Iowa, 144—478.

†19 Iowa, 125; 22 Iowa, 457; 36 Iowa, 485; 39 Iowa, 23.

‡22 Iowa, 457; 26 Iowa, 377; 29 Iowa, 73.

§30 Iowa, 258; 34 Iowa, 144; 20 Pick., 291.

¶40 Iowa, 637; 32 Ill., 278; Angel on Highways, 151; 15 Ill., 241.

used by the public for several years, and considerable expenditures made thereon in its improvement; it was held that the dedicator or his assignee could assume possession again, upon its being ascertained that the old highway was not a legal highway.*

When the public have traveled for more than ten years a route deviating slightly from that originally established, by reason of an obstacle in the surveyed route, and pursuant to some arrangement with adjacent owners and not by mistake merely, such traveled route becomes a highway by prescription;† but the dedication of a highway for private purposes will not establish a public highway by prescription.‡

X. CATTLE-WAYS ACROSS HIGHWAYS.

Upon application by any person to the board of supervisors of any county for permission to construct a cattle-way across, over or under any public highway, the board may grant the same; provided said cattle-way shall not interfere with the travel upon such highway; but the person who applied for such cattle-way shall construct the same at his own expense, and be responsible for all damages that may arise from its construction or from the same not being kept in good condition, and that the grade of the highway over the cattle-way shall not exceed one foot in ten.

If the person on whose land such cattle-way is constructed, fails to keep the same in good repair, then it shall be the duty of the road supervisor to make all repairs necessary and charge the same to the owner of the land upon which such cattle-way is constructed, and upon his refusal or failure to pay, the supervisor shall recover the same in an action brought in his own name in any court having competent jurisdiction; which money, when collected, shall be expended for improving or repairing the public highway in the road district where such cattle-way is constructed. Provided that no person shall construct any cattle-way so as to obstruct the freedom of the public in watering at any running stream.||

XI. DUTIES OF TOWNSHIP TRUSTEES IN REFERENCE TO HIGHWAYS.

SECTION 969. The township trustees of each township shall meet on the first Monday in April, or as soon thereafter as the assessment book is received by the township clerk, and on the first Monday in October in each year. At the April meeting said trustees shall determine:

* 37 Iowa, 250.

† 36 Iowa, 614.

‡ 36 Iowa, 485.

|| Laws of 1876, Chapter 111,

1. Upon the amount of property tax to be levied for highways, bridges, guide-boards, plows, scrapers, tools, and machinery adapted to the construction and repair of highways, and for the payment of any indebtedness previously incurred for highway purposes, and levy the same, which shall not be less than one nor more than five mills on the dollar on the amount of the township assessment for that year;

2. Whether any portion of said tax shall be paid in labor, and, if so, what portion may be so paid;

3. Upon the amount that will be allowed for a day's labor done by a man, and by a man and team, on the highway ;

4. At the October meeting, said trustees shall divide their respective townships into such number of highway districts as they may deem necessary for the public good, and, at said meeting they shall settle with the township clerk and supervisors of highways.

SEC. 970. The trustees shall set apart such portion of the tax specified in the preceding section of this chapter, as they deem necessary for the purpose of purchasing the tools and machinery, and paying for the guide-boards mentioned in said section, and the same shall constitute a general township fund ; and such trustees shall require the township clerk to give bond in such sum as they deem proper, conditioned as the bonds of county officers, which bond, and the surties thereon, shall be approved by said trustees. Said clerk shall take charge of and properly preserve and keep in repair such tools, implements, and machinery as may be purchased with said general township fund, and shall have authority to determine at what time the supervisors of the several districts may have the custody and use of the same, or any part thereof, and shall be responsible for the safe keeping of the same, when not in custody of some one of the supervisors for use in working the highways in his district, and shall receive such compensation as the trustees shall provide to be paid out of such fund.

The tools and machinery necessary for the construction and repair of highways are to be owned by the Township, and not by the several road Districts.*

SEC. 971. The trustees shall order and direct the expenditure of the general township fund.

XII. DUTIES OF TOWNSHIP CLERK IN REFERENCE TO HIGHWAYS.

SECTION 972. The township clerk shall furnish each supervisor, to be by him transferred to his successor in office, with a copy of so much of the map or plat furnished such clerk by the auditor as relates to the highways in the district of such supervisor, and, from time to time, to mark thereon the changes in or additions to such highways as the same are certified to him by the auditor.

The map referred to in section 972, to be delivered by the township clerk to the highway supervisor, confers no additional authority upon him, and is no authority for his action; and in an action against him for trespass for throwing down fences of another while claiming to open a highway, he cannot justify under the map, although it purports to contain all the legal highways in the township and represents the line in question to be a legal highway. The rule that a ministerial officer is not liable for the executing of legal process does not apply; and he must show that in fact a highway did exist either *de facto* or *de jure*. *

SEC. 973. The township clerk shall, within four weeks after the trustees have levied the property tax, make out a tax list for each highway district in his township, which list shall be in tabular form and in alphabetical order, having distinct columns for lands, town lots, and personal property, and carry out in a column the amount of the tax on each piece of land, and town lot, and on the amount of personal property belonging to each individual; and he shall carry out the amount of tax, to be paid in money, due from each individual in a column by itself; which list shall contain the names of all persons required to perform two days' labor upon the highway as a poll tax; and to enable the township clerk to make out such tax list, the assessor shall furnish the township clerk of each township, on or before the first day of April of each year, a correct copy of the assessment lists of said township for that year, which list shall be the basis of such tax list. The county auditor shall furnish the several township clerks of his county with printed blanks necessary to carry into effect the provisions of this chapter.

Under section 973 railroads are subject to assessment for road tax. †

SECTION 974. The township clerk shall make an entry upon such tax list showing what it is, for what highway district, and for what year, and shall attach to the list his warrant under his hand, in general terms, requiring the supervisor of such district to collect the taxes therein charged as herein provided; and no informality in the above requirements shall render any proceedings for the collection of such taxes illegal. The clerk is hereby required to cause such lists to be delivered to the proper supervisors of his township within thirty days after the levy, and take receipts therefor; and such list shall be full and sufficient authority for the supervisor to collect all taxes therein charged against resident property-holders in his district.

The entry should be written on the back of the list and near the top when folded, and may be as follows:

Highway tax list for year....18..., for highway district No.....,township,....county, Iowa.

The warrant of the township clerk may be attached to the list at the most convenient place, and may be in form as follows:

* 34 Iowa, 494.

† 41 Iowa, 63.

No. 7.—WARRANT OF TOWNSHIP CLERK TO COLLECT TAXES.

To..... *Supervisor of Highway District No....., in.....township,.....county, Iowa:*

You are hereby authorized and commanded to collect the taxes charged in the within list as by statute in such cases made and provided. Given under my hand this....day of....18..

.....*Township Clerk.*

When the clerk delivers the tax lists to the supervisors, he is required to take a receipt therefor from each supervisor receiving such list, which receipt may be in the following form:

No. 8.—SUPERVISOR'S RECEIPT FOR HIGHWAY TAX LIST.

Received of.....clerk of.....township,..... county, Iowa, the tax list for highway district number....., in.....township, for the year 18.., amounting to....dollars and....cents.

Dated this....day of....18..

.....*Supervisor of Highway District No.....*

SECTION 975. The township clerk shall, on or before the second Monday in October in each year, make out a certified list of all land, town lots, and personal property on which the highway tax has not been paid, and the amount of tax charged on each parcel of land, town lot, or personal property, designating the district in which the same is situated, and transmit the same to the auditor, who shall enter the amount of tax to each piece of land or town lot and person taxed for personal property in the column ruled for that purpose, the same as other taxes, and deliver the same to the county treasurer, charging him with the same, which shall be collected by such treasurer in the same manner that county taxes are collected; and in case the township clerk shall fail or neglect to make such return, he shall forfeit and pay to the use of the township, for highway purposes, a sum equal to the amount of tax on said land, which may be collected by suit on his official bond before any court having competent jurisdiction.

SECTION 976. The county treasurer shall, on the last Monday in March and September in each year, pay to the township clerk all the highway taxes belonging to his township which are at such times in his hands, taking the duplicate receipts of such clerk therefor, one of which shall be delivered by such treasurer, on or before the first Monday in April and October in each year, to the trustees.

XIII. HIGHWAY SUPERVISORS, ELECTION, QUALIFICATION AND DUTIES.

No person shall vote for supervisor of highways of any highway district other than that in which he resides at the time of election. Votes for highway supervisors are to be separate and deposited in separate ballot boxes or compartments.*

* Laws of 1878, Chap. 71.

SECTION 977. The supervisor must reside in the district for which he is elected or appointed, and no person shall be required to serve as supervisor who is exempt from performing labor on the highway.

SECTION 978. Each supervisor shall be required to give bond in such sum and with such security as the township clerk may deem requisite, and conditioned that he will faithfully and impartially perform all the duties devolving upon him, and appropriate all moneys that may come into his hands by virtue of his office according to law; and in case of a vacancy occurring in any highway district within a township, the township clerk shall fill such vacancy by appointment.

The bond above prescribed may be as follows:

No. 9.—HIGHWAY SUPERVISOR'S BOND.

Know all men by these presents: That.....as principal, andas sureties, of....county, Iowa, are held and firmly bound unto the state of Iowa, for the use of the highway fund in highway district number....in....township,.....county, Iowa, in the penal sum of.....dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs and assigns, firmly by these presents.

The condition of the above obligation is such: That whereas, the above bounden.....has been elected (or appointed) supervisor in highway district number....in....township.....county, Iowa.

Now, if the said.....will faithfully and impartially perform all the duties devolving upon him, and appropriate all moneys that may come into his hands by virtue of his office, according to law, then this obligation to be void, otherwise to be in full force and virtue.

Signed this.....day of.....18..*Principal.*

Approved this.....day of.....18..
.....*Township Clerk.* } *Sureties.*

STATE OF IOWA, }
.. ..COUNTY, } ss.

I.....solemnly swear that I will support the constitution of the United States and the constitution of the State of Iowa, and that I will faithfully and impartially discharge the duties of the office of highway supervisor according to the best of my ability.

Subscribed and sworn to by.....before me this.....day
of.....A. D. 18..

IN THE APPROVAL of official bonds, the clerk cannot exercise too much care. Supervisors frequently have considerable money come into their hands by virtue of their office, and should the same be squandered or misapplied, and the signers of the bond be irresponsible, the clerk may become liable therefor.

THE PENALTY specified in the bond must not be less than double the amount the supervisor will be likely to have in his hands at any one time, which amount may readily be ascertained from the tax list and other records in the clerk's possession.

SECTION 979. The township clerk shall notify each supervisor within five days after his election or appointment, and if he shall fail to appear before said township clerk, unless prevented by sickness, within ten days, and give bond and take the oath of office, he shall forfeit and pay the sum of five dollars, and in case of his failing or refusing to pay the same, his successor in office shall collect the said amount by suit or otherwise, and apply the same to the repairing of highways in his district.

The notice of the election or appointment of highway supervisors may be in the following form:

No. 10.—NOTICE OF ELECTION OR APPOINTMENT OF HIGHWAY SUPERVISOR.

To.....: You are hereby notified that you have been elected (or appointed as the case may be) highway supervisor for highway district number....in.....township,....county, Iowa, and you are required to appear before the undersigned and give bond and take the oath of office within ten days after the service of this notice; and on your failure to do so, you will be liable to pay a forfeiture of five dollars.

Given under my hand this.....day of.....18..

.....*Township Clerk.*

The notice may be served by the same person and return made in the same manner, as other notices of a like character are served and returned.*

SECTION 980. The supervisor shall, within ten days after receiving the tax list specified in sections nine hundred and seventy-three and nine hundred and seventy four, post up in three conspicuous places within his district, written notices of the amount of highway tax assessed to each tax payer in said district.

The better way is to copy off three tax lists from the list received from the township clerk and post them up, and the supervisor can then keep the original for reference.

SECTION 981. The supervisor shall cause all tax collected by him to be expended for the purposes specified in section nine hundred and sixty-nine of this code, on or before the first day of October of that year, except the portion set apart for a general township fund as provided in said section, which shall be by the supervisor paid over to the township clerk from time to time as collected, and his receipt taken therefor.

The receipt may be in the following form:

*See forms No. 3, 4 and 5.

No. 11. CLERK'S RECEIPT TO HIGHWAY SUPERVISOR.

\$..... township,....county, Iowa.
 Received of.....supervisor of highway district number....in
township.....county, Iowa, the sum of.....dollars and....
 cents, general township fund collected by him.
 *Township Clerk.*

SECTION 982. The money tax levied upon the property in each district, except that portion set apart as a general township fund, whether collected by the supervisor or county treasurer, shall be expended for highway purposes in that district, and no part thereof shall be paid out or expended for the benefit of another district.

SEC. 983. The supervisor shall require all able bodied male residents of his district between the ages of twenty-one and forty-five, to perform two days' labor upon the highway between the first day of April and September of each year.

SEC. 984. The supervisor shall give at least three days notice of the day or days and place designated to work the highways to all persons subject to work thereon, or who are charged with a highway tax within his district, and all persons so notified must meet said supervisor at such time and place with such tools, implements, and teams as the supervisor may designate, and shall labor diligently under the direction of the supervisor for eight hours each day; and for such two days' labor performed, the supervisor shall give to the person a certificate, which certificate shall be evidence that such person has performed labor on the public highway, and shall exempt such person from performing labor in payment of highway poll tax in that or any other highway district for the same year. And the supervisor shall give any person who may perform labor in payment of his highway tax, if demanded, a receipt showing the amount of money earned by such labor, which shall be evidence of the payment of said tax to the amount specified in the receipt.

Should there be any persons between the ages of twenty-one and forty-five, residing in the district, whose names are not on the list, it is the duty of the supervisor to place their names on said list and compel all such to perform labor, as required in this chapter.

The notice mentioned in the foregoing section may be either verbal or written. As the statute points out no manner in which the notice shall be served, it seems that any manner is sufficient, provided the person to be notified receives it, and no person can be compelled to perform the labor until such notice shall have been given.

Should it be necessary or more convenient to give a written notice, it may be in form as follows:

No. 12.—NOTICE TO PERFORM LABOR ON THE HIGHWAY.

To.....: You being subject to perform labor on the highway in this district, you are hereby notified to appear with [here state what implements,] on the day of 18 .., at o'clock ... M., at [here name the place] for the purpose of working out your said highway tax. Given under my hand this day of 18 ..

..... *Supervisor of Highway District No.*

To any person who shall have performed the two days labor in payment of his highway labor or poll tax, the supervisor shall give a certificate, substantially as follows :

No. 13.

I hereby certify that has performed two days' labor in full payment of his highway labor or poll tax assessed in highway district number . . . in . . . township, . . . county, Iowa, for the year 18 ..

Given under my hand this day of 18 ..

. *Highway Supervisor.*

When a person pays his highway labor or poll tax in money instead of labor, the above form may be changed as required.

And to any who performs labor in payment of his highway property tax, if demanded, the supervisor shall give a receipt, which may be in form as follows:

No. 14.

\$ township, county, Iowa, 18 ..

Received of the sum of dollars and . . . cents, in labor on his highway property tax in district number . . . in . . . township, . . . county, Iowa, in [here state whether in full or in part] payment of his highway property tax for the year 18 ..

. *Supervisor of District No.*

SECTION 985. Each person liable to perform labor on the highway as poll tax, who shall fail or neglect to attend, either in person or by satisfactory substitute, at the time and place appointed, with the designated tool, implement, or team, having had three days' notice thereof, or having attended, shall spend his time in idleness, or disobey the supervisor, or fail to furnish said supervisor within five days thereafter, some satisfactory excuse for not attending, shall forfeit and pay to said supervisor the sum of three dollars for each day's delinquency, and in case of failure to pay such forfeit within ten days, the supervisor shall recover the same by action in the name of the supervisor, and no property or wages belonging to said person shall be exempt to the defendant on execution.

Nor person will be released from performing the required two days' labor, even should a satisfactory excuse be given for not appearing at the time required as provided above.

In municipal corporations all able bodied male residents of the corporation between the ages of twenty-one and fifty years, shall, between the first day of April and the first day of September in each year, either by themselves or satisfactory substitutes, perform two days' labor

on the streets, alleys, or highways within such corporation at such times and places as the proper officer may direct, and upon three days' notice in writing given; the corporation may provide that for each days' failure to attend and perform the labor as required, at the time and place specified, the delinquent shall forfeit and pay to the corporation any sum not exceeding two dollars for each day's delinquency, and if not paid on the first day of September of each year, may be treated and collected as taxes on property, and the same shall be a lien on all the property of the delinquent that may be listed for taxation and assessed and owned by him on the first day of November of the same year. *

A man who is not able bodied is not liable to the penalty prescribed for failure to appear when summoned by the supervisor to perform labor on the highway, nor would the failure of such person to make his disabilities known to the supervisor change the rule. †

Any person who is an active member of any fire engine, hook and ladder, hose, or any other company for the extinguishment of fire, or the protection of property at fires under control of the corporate authorities of any city or incorporated town, shall, during the time he shall continue an active member of such company, be exempt from the performance of any military duty, and from the performance of labor on the highways on account of poll tax, and from serving as a juror. ‡

SECTION 986. The supervisor shall perform the same amount of labor as is required of an able bodied man, for which he shall be allowed the sum fixed by the trustees for each day's labor, including the time necessarily spent in notifying the hands and making out his returns, which sum shall be paid out of the highway fund, after deducting his two days' work. When there is no money in the hands of the clerk with which to pay the said supervisor, he shall be entitled to receive a certificate for the amount of labor performed, which certificate shall be received in payment of his own highway tax for any succeeding year.

The supervisor should keep an accurate account of each day (of eight hours) actually spent by him in the discharge of his duties, and make a detailed statement of the same to the trustees on the first Monday in October.

The certificate provided for in the preceding section may be substantially as follows :

* Code of 1873, §487.

† 31 Iowa, 75.

‡ Code of 1873, §1560.

No. 15.—CERTIFICATE OF LABOR PERFORMED ON HIGHWAY.

.....township,.....county, Iowa.
 I,.....clerk of.....township,.....county, Iowa, do hereby
 certify that.....has performed [here state the number of days] days
 labor on the highway in highway district number....in.....town-
 ship,.....county, Iowa, during the year 18.., and that there is no
 money in my hands with which to pay the same.

Given under my hand this.....day of.... 18..

.....*Township Clerk.*

Should there be money in the hands of the clerk subsequent to the giving of such receipt sufficient to pay the same off, he may do so, and take up said receipt and credit the amount on his books.

SECTION 987. The supervisors of the several districts of each township shall report to the township clerk on the first Monday of April and October of each year, which report shall embrace the following items:

1. The names of all persons in his district required to perform labor on the public highway, and the amount performed by each;
2. The names of all persons against whom suits have been brought, as required by section nine hundred and eighty-five, and the amount collected of each;
3. The names of all persons who have paid their property highway tax in labor, and the amount paid by each;
4. The names of all persons who have paid their property tax in money, and the amount paid by each;
5. A correct list of all non-resident lands and town lots on which the highway tax has been paid, and the amount paid by each;
6. A correct list of all non-resident lands and town lots on which the highway tax has not been paid, and the amount of tax on each piece;
7. The amount of all moneys coming into his hands by virtue of his office, and from what sources;
8. The manner in which moneys coming into his hands by virtue of his office have been expended, and the amount, if any, in his possession;
9. The number of days he has been faithfully employed in the discharge of his duty;
10. The condition of the highways in his district, and such other items and suggestions as said supervisor may wish to make, which report shall be signed and sworn to by said supervisor and filed by the township clerk in his office

It is the duty of the township clerk to provide the supervisors with the necessary blanks on which to make out their reports ; but should no blanks be provided, the supervisors may use the following form in making out such reports, which may be altered and changed when necessary to meet the circumstances of each case.

No. 16.—REPORT OF HIGHWAY SUPERVISOR.*

The State of Iowa,)
County,) Highway District No...,.....township.

To the Township Clerk of said Township:

The undersigned, supervisor of said highway district, herewith presents his semi-annual report in compliance with section 987, Code of 1873, as follows:

NAMES Of persons required to perform labor and pay tax for highway purposes.	Poll Tax.		Property Tax.			Sued for Poll Tax.		REMARKS.
	Days labor performed	Amount paid in cash.	Am't levied.	Am't paid in labor.	Am't paid in cash.	No	Am't col- lected.	
Allen, John....	2		\$12 00	\$6 00	\$6 00			
Baker, A.....	1	1 25	6 00	1 25	4 75			
Coons, S. T.						1	5 50	

This report is required to be made on the first Monday of April and October of each year.

The list of non-resident lands and town lots specified in the foregoing section, may be in form as follows :

No. 17.—LIST OF NON-RESIDENT LANDS AND TOWN LOTS

In highway district number.....in.....township.....county,
 Iowa, showing the highway taxes for the year 18.., paid and un-
 paid since last report.

Parts of Section. Name of Town. or Sub-division.	Sec. or Lot.	Twp. or Block.	Range.	Amount of Tax Levied.		Amount Paid.		Amount Unpaid.		Remarks.
W½ S W. ¼	6	67	42	6	00			6	00	
N. W. N. W.	13	67	40	12	00	6	00	6	00	

The account of moneys received and expended, as above provided, should be accompanied with receipts or vouchers for all moneys paid out in his official capacity, and may be in form as follows:

*Blanks for Highway Supervisor's Annual Reports may be had of Acres, Blackmar & Co., Burlington, Iowa.

No. 18.—HIGHWAY SUPERVISOR'S CASH ACCOUNT.

District No. township.

MONEYS RECEIVED.

18.	Amount on hand at last report.	\$ 10 00
" "	received from township clerk.	100 00
" "	collected on poll tax, as shown herein.	25 00
" "	" on property tax, as shown herein.	50 00
" "	" by suits for poll tax, as shown herein.	10 00
" "	
" "	
Total.		\$ 195 00

MONEYS EXPENDED.

18.	P'd for lab. on pub. highways, as shown by rec'pts herewith	\$100 00
" " " "	bridge material, as shown by receipts herewith. . . .	50 00
" "	
" "	
Balance on hand.		45 00
Total.		<u>\$195 00</u>

Attached to his report of taxes paid and unpaid, list of non-resident lands and town lots, and of moneys received and expended as above provided, must be his affidavit showing the correctness of said report, number of days he has been employed in the performance of his official duties, and the condition of the highways in his district at the time of such report, which affidavit may be in form as follows:

No. 19.—OATH TO HIGHWAY SUPERVISOR'S REPORT.

The State of Iowa, }
 County, } ss. I, being duly sworn on oath, say
 that I am supervisor of Highways in District No. . . . of township,
 in said county and state; that the above and foregoing report is true
 and correct in every particular; that I have been faithfully employed
 days during the last months in the discharge of my duties as
 highway supervisor, and that the highways in said district are in
 condition. *Highway Supervisor.*

Subscribed and sworn to by before me, 18..

.

Each highway supervisor should keep in a book kept for that purpose,* a correct account between himself and the district, showing the time, from whom, and the amounts of all moneys received; the time, to whom, for what, and the amounts of all moneys paid out, which account may be substantially as follows:

* Highway Supervisors' Account Books may be had by sending \$1.00 to Acres, Blackmar & Co. Burlington, Iowa.

No. 20.—ACCOUNT BETWEEN HIGHWAY SUPERVISOR AND THE DISTRICT.

.....Supervisor, in account with

Highway District No.....township.....county, Iowa:

MONEYS RECEIVED.

DR.

18.	April 1.	To cash from Township Clerk.....	\$100 00
"	" 5.	" " " J. Taff, on tax list.....	20 00
"	" 20.	" " " T. Laub, on tax list.....	70 00
TOTAL, - - - - -			<u>\$190 00</u>

MONEYS EXPENDED.

CR.

18.	May 4.	By cash paid T. Lee, for lumber, vouch. No. 1..	\$ 15 00
"	" 10.	" " " G. Fox, for labor, " " 2..	10 00
"	" 12.	" " " A. Mann, for nails, " " 3..	1 00
"	" 15.	" " " W. Ill, for timber, " " 4..	100 00
"	" 27.	" " " J. Robb, for labor, " " 5..	15 00
"	July 1.	" " " I. Frame, for plank, " " 6..	25 00
"	" 20.	" " " Township Clerk, " " 7..	24 00
			<u>\$190 00</u>

As the supervisor is charged by the township clerk with the amount on the tax list, it is necessary that he use care in noting the number of days' labor performed and the money paid by the persons therein named; he must be enabled to show in his settlement with the clerk how many have paid their tax in labor and how many in money; the amount of tax due in labor or poll tax, and the amount of property tax due and unpaid. No money should be expended without taking a receipt or voucher therefor, to be filed away until his settlement with the township clerk. Unless the supervisor can account for all moneys coming into his hands, he will be liable for any deficit.

SEC. 988. If it appears from such report that any person has failed to perform the two days' labor required, or any part thereof, and that the supervisor has neglected to collect the amount in money required to be paid in case of such failure, the clerk shall add the amount required to be paid in case of such failure to such person's property tax, and certify the same as required in section nine hundred and seventy-five, and the auditor shall enter the same on the proper tax list, and the treasurer shall collect the same as required in said section nine hundred and seventy-five.

SEC. 989. The supervisor is not permitted to cut down or injure any tree growing by the wayside which does not obstruct the highway, and which stands in front of any town lot, enclosure, or cultivated field, or any ground reserved for any public use, where such tree is intended to be preserved for shade or ornament by the proprietor of the land on or adjacent to which the tree is standing; and it shall not be lawful for the supervisor to enter upon any enclosed or unenclosed lands for the purpose of taking timber therefrom, without first receiving permission from the owner or owners of said lands.

This does not authorize the taking of stone from the bed of a river, which is no part of the public highway.*

Supervisors will be restrained from removing standing trees in the highway in front of the owner's premises, unless such removal is demanded by the wants of public travel and convenience; and the determination of the supervisors in such cases is not conclusive, but may be reviewed and controlled.†

SECTION 990.‡ When notified in writing, that any bridge or any portion of the public highway is unsafe, the supervisor shall be liable for all damages resulting from the unsafe or impassible condition of the highway or bridge, after allowing a reasonable time for repairing the same. And if there is in his district any bridge erected or maintained by the county, then, in that event, he shall, on such notice of the unsafe condition of such county bridge, as soon as he reasonably can, obstruct passage on such bridge and use strict diligence in notifying at least one member of the board of supervisors of his county, in writing, of the unsafe condition of such bridge; and if he fails so to obstruct and notify, he shall be liable for all damages growing out of the unsafe condition of such bridge, occurring between the time he is so notified and such time as he neglects in obstructing such passage; and any person who shall remove such obstruction shall be liable for all damages occurring to any person resulting from such removal.

It is the duty of every person knowing any portion of the highway or any bridge to be in an unsafe condition to notify the supervisor of the fact at once; but to make him liable for neglect, the notice must be in writing,|| and may be in form as follows:

No. 21.—NOTICE TO SUPERVISOR OF THE UNSAFE CONDITION
OF HIGHWAYS.

To.....Supervisor of Highways in Highway District No....in
township,....county, Iowa:

You are hereby notified that the highway (or bridge) [here accurately describe the highway and place of defect] is in an unsafe condition.
Dated....this....day....of....18.. .. .

The statute makes no provision in reference to the service and return of the above notice, but it will be sufficient if it be conclusively shown that such notice was given.

The better way is to have the notice served and return made in the same manner that notices to property owners are served and returned, except that no publication is required. §

*35 Iowa, 98.

†36 Iowa, 583.

‡As amended by chap. 52, Laws of 1878.

||26 Iowa, 270.

§See forms No. 3, 4, 5.

SECTION 991. For making such extraordinary repairs, the supervisor may call out any or all the able-bodied men in the district in which they are to be made, but not more than two days at one time without their consent, and persons so called out shall be entitled to receive a certificate from the supervisor, certifying the number of days labor performed, which certificate shall be received in payment for highway tax for that or any succeeding year at the rate per day established for that year.

The certificate mentioned in the preceding section may be the same as that given for labor performed on highways.*

SECTION 992. If any able-bodied man, when duly summoned for any such purpose, fails to appear and labor diligently by himself or substitute, or send satisfactory excuse therefor, or to pay the value of such work in money at any time before suit is brought, he is liable to a fine of ten dollars, to be recovered by suit before any justice of the peace in the name of the supervisor, and for the use of the highway fund of the district.

SECTION 993. The supervisor shall remove obstructions in the highways caused by fences or otherwise, but he must not throw down or remove fences which do not directly obstruct the travel upon the highway, until reasonable notice in writing, not exceeding six months, has been given to the owner of the land enclosed in part by such fence.

The reasonable time will depend on circumstances, owing to the season of the year, and the damage that may result from the removing or throwing down of such fence, and is a fact for the determination of a jury.† The notice may be served and returned in the manner that notices to property owners are served and returned when served on persons residing within the county.‡ Such notice may be in the following form:

No. 22.—NOTICE TO REMOVE FENCES OBSTRUCTING THE
HIGHWAY.

To.....: You are hereby notified that you are required to remove your fence [here describe it] now obstructing the highway, on or before the....day of....18.., or said fence will be removed by the undersigned.

Dated this....day of....18..

.....*Supervisor of Highway District No..*

To obstruct a highway it is not necessary that it should be rendered impassable. An obstruction is an impediment; a hindrance; that which impedes progress.||

SECTION 994. The supervisor shall keep the highways in as good condition as the funds at his disposal will permit, and shall place guide-boards at cross-roads and at the forks of the highways in his district; said boards to be made out of good timber, the same to be well painted and lettered, and placed upon good substantial hard wood posts, to be set four feet in and to be at least eight feet above ground.

*See form No. 15.

†39 Iowa, 607; 40 Iowa, 684.

‡See forms Nos. 3, 4, 5.

||43 Iowa, 145.

SECTION 995. The supervisor of highways, when notified in writing that any Canada Thistles are growing upon any vacant or non-resident lands or lots within his district, the owner, agent, or lessee of which is unknown, shall cause the same to be destroyed and make return in writing to the board of supervisors of his county, with a bill for his expenses or charges therefor, which shall be audited and allowed by said board and paid from the county fund; and the amount so paid shall be entered up and levied against the lands or lots on which said thistles have been destroyed, and collected by the county treasurer the same as other taxes and returned to the county fund.

SECTION 996. The supervisors are required to meet the township trustees at their meeting on the first Monday in October in each year, at which time there shall be a settlement of the accounts of such supervisors connected with the highway fund, for putting up guide-boards and for any other services; and after payment of the supervisors, the trustees shall order such distribution of the fund in the hands of the township clerk, as they may deem expedient for highway purposes, and the clerk shall pay the same out as ordered by the trustees.

SECTION 997. Should there be no money in the treasury on final settlement of the supervisors with the trustees, said trustees shall order the township clerk to issue orders for the amount due the supervisors. The orders so issued shall be numbered with the number of the district to which they belong, and shall be received the same as money in the payment of highway tax in the district to which they are issued.

SECTION 998. Any supervisor failing or neglecting to perform the duties required by this chapter, shall forfeit and pay for the use of the highway fund of his district the sum of ten dollars; the township clerk shall, in case of such failure or neglect, commence suit in his name for the collection of the same, before any justice of the peace within the proper township.

SECTION 999. Where any owner or occupant of land adjoining or abutting upon any highway may desire to plant a hedge upon the line of the same, he shall be allowed to build his fence upon such highway; but he shall not build the fence more than five feet within the outer line of said highway, and said fence may be built on both sides of all highways of fifty feet or more in width at the same time. Such owner or occupant shall not be allowed to occupy such highway as aforesaid for more than ten years, and not more than six months before such hedge shall be planted, and at the expiration of such time he shall remove such fence upon the order of the supervisor of the district where such highway is situated.

A highway becomes a public highway whether established by the original location or by re-location, and the erection of a fence across it would amount to an obstruction; and when a person is indicted for obstructing a public highway the only questions to be determined are:

“1. Was it a public highway as recognized by law?”

“2. Was it obstructed by the defendant?”* and malice is not a necessary element of the offense of obstructing a highway, the intention to so obstruct only being necessary to precede the act.† If the

*1 Green, 439.

†40 Iowa, 374.

highway laid out cannot be used on account of natural obstructions, and another line is established by prescription or long usage in order to evade such natural obstructions, the owner of the adjacent land cannot fence up such traveled highway without being liable.*

In removing fences and other obstacles from the highway, the supervisor must not exceed his authority given by the statute, and must then perform his duty in respect thereto in an ordinarily prudent and careful manner; and if when he so acts, he makes slight variations from, or infringements over the line upon the lands of adjacent proprietors, it seems he will not be liable for trespass;† and if he fails to remove fences or other obstructions as required by law, he may be compelled by an action of *mandamus*.‡

If a fence along a highway is so situated as to endanger public travel, although it does not extend across the track, or to require removal in order to render the road safe for the public use, it is a direct obstruction of the highway and should be removed.¶

The statute provides that if any person maliciously injure, remove or destroy any bridge, road, or plank road, or place or cause to be placed any obstruction on such bridge, highway or road, or wilfully obstruct or injure any public road or highway, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding one year;§ and a prosecution may be supported for obstructing a highway established by use or prescription, which is of less width than a county or state road established in the manner pointed out by the statute; *a* but a fence projecting into the highway which does not obstruct public travel is not such an obstruction as would justify a criminal prosecution, and the highway supervisor shall not cause it to be removed without giving the owner reasonable notice.*b*

While highway supervisors are in duty bound to keep the highways in as good condition as the funds at their disposal will permit,*c* and are liable for all damages resulting from the unsafe or impassable condition of the highways or bridges when notified of such defect, *d* they are not liable for damages resulting from defects, the repairs of which would involve extraordinary expenditures.*e* However, it is the duty of supervisors to make small bridges and repair small defects in large bridges, and for a failure or neglect to do so they are liable.*f*

*40 Iowa, 595.

†31 Iowa, 138.

‡36 Iowa, 93.

§39 Iowa, 607.

§ Code of 1873, §3979.

a 28 Iowa, 514.

b 40 Iowa, 684.

c Code of 1873, §994.

d Code of 1873, §990.

e 13 Iowa, 181.

f 13 Iowa, 181.

It is the duty of the county in which a bridge is situated to make all repairs requiring an extraordinary expenditure of money;* such as would properly come under the designation of county bridges, and such as the county would be bound to build or repair, or over which its officers had exercised jurisdiction;† hence, in application of the rule it was held of a bridge some twelve or fourteen feet wide, across a ditch or small ravine two or three feet wide, and two feet in depth, in which structure there was a hole which caused an injury to the plaintiff while traveling on the public highway of which such bridge was a part, that the county was not liable; but a county has been held liable for the unsafe condition of bridges that have been built by county authorities.‡

In order for a person to maintain an action on account of an injury occasioned by a defect in a highway, he must show that the highway was unsafe, and that he was in the exercise of ordinary prudence and care in traveling thereon, and an action may be maintained although the primary cause of the injury was an accident, as the breaking of the carriage or running away of the team, if the party was not in fault.§

XIV. CONSTRUCTION OF HIGHWAYS LEADING INTO CITIES AND TOWNS.

In reference to the construction and repair of highways leading into cities and incorporated towns, the statute provides that they may do so by appropriating therefor a portion of the highway tax belonging to said city or incorporated town, not exceeding fifty per cent. thereof annually, as hereinafter provided. When a petition shall be presented to the council or trustees, signed by one-third of the resident tax-payers of said city or town, asking that the question of aiding in the construction or repair of any highway leading thereto be submitted to the voters thereof, the council or trustees shall immediately give notice of a special election by posting notices in five public places in said town at least ten days before said election, which notice shall specify the time and place of holding said election, the particular highway proposed to be aided, the proportion of the highway tax then levied and not expended, or next thereafter to be levied to be appropriated, at which election the question of "appropriation" or "no appropriation" shall be submitted, and if a majority of the votes polled be for appropriation, then the council or trustees may aid in the con-

* 13 Iowa, 181.

† 26 Iowa, 205.

‡ 26 Iowa, 265.

§ 25 Iowa, 108.

struction and repair of said highway to the extent of said appropriation, in the same manner as they otherwise would if said highway was within the corporation limits of said city or town; but no part of such highway tax shall be expended more than two miles from the limits of such city or town.*

XV. MEETING ON HIGHWAYS.

SECTION 1000. Persons meeting each other on the public highways shall give one-half of the same by turning to the right. All persons failing to observe the provisions of this section shall be liable to pay all damages resulting therefrom, together with a fine not exceeding five dollars, which fine shall be appropriated to repairing the highways in the district where the violation occurred ; but no prosecution shall be instituted except on complaint of the person wronged.

* Code of 1873, §488.

BRIDGES AND FERRIES.

XVI. BRIDGES.

The board of supervisors have power, and it is their duty to provide for the erection of all bridges which may be necessary, and which the public convenience may require, within their respective counties, and to keep the same in repair; but it shall not be competent for said board to order the erection of a bridge where the probable cost will exceed five thousand dollars, until a proposition therefor shall have been first submitted to the legal voters of the county, and voted for by a majority of all voting for and against such proposition at a general election,* notice of the same being given for thirty days previously in a newspaper, if one is published in the county, and if none be published therein, then by written notice posted in a public place in each township in the county; *provided*, that the board of supervisors of any county having a population of more than ten thousand, may appropriate for the construction of any one bridge, which is or may hereafter become a county charge within the limits of such county, or may appropriate towards the construction of any bridge across any unnavigable river, which is the dividing line between any two counties in this state, and between one county in this state and another state, such sum as may be necessary, not exceeding the sum of forty dollars per lineal foot for superstructure; but in no case shall they appropriate for said purpose, including superstructure and approaches, a sum exceeding fifteen thousand dollars; *provided, however*, that in any county having a population exceeding fifteen thousand, said board may appropriate as aforesaid, not to exceed twenty-five thousand dollars; *provided*, that no county shall expend a sum exceeding fifteen thousand dollars in aid of the construction of a bridge across a stream which is the dividing line between two counties.†

SECTION 1001. Bridges erected or maintained by the public, constitute parts of the highway, and must not be less than sixteen feet in width.

*25 Iowa, 238.

†Code of 1873, sec. 303, as amended by Laws of 1876, chapter 80.

It seems that courts will not compel the construction of a bridge where the board of supervisors have determined that the public interests do not require it.*

SECTION 1002. Any person riding or driving faster than a walk across any bridge maintained at the public charge, shall be subject to pay the following penalties: When the bridge is twenty-five feet in length, and does not exceed one hundred, the sum of one dollar for each offense; when it is over one hundred, and does not exceed two hundred feet in length, the sum of three dollars for each offense; where it is over two hundred, and does not exceed three hundred feet in length, the sum of five dollars for each offense; and the further additional sum of one dollar for each offense for every hundred feet in length in excess of three hundred, to be recovered by civil action in the name and for the county in which the bridge is situated. If the bridge is situated in more than one county the action is maintainable in or by either.

In cities and incorporated towns, the council shall have the care, supervision and control of all public highways and bridges within the city, and shall cause the same to be kept in repair; and all public bridges exceeding forty feet in length over any stream crossing a state or county highway, shall be constructed and kept in repair by the county; *provided*, that the city council may appropriate a sum not exceeding ten dollars per lineal foot to aid in the construction of any county bridge within the limits of such city, or may appropriate a like sum to aid in the construction of any bridge contiguous to said city on a highway leading to the same, or any bridge across any unnavigable river which divides the county in which said city is located from another state.†

The board of supervisors is invested with power to erect and repair necessary bridges, and may levy a tax therefor not exceeding three mills on the dollar;‡ they also have power to aid in the construction of free bridges for public highways, either within or without incorporated cities and towns; and section ten hundred and ninety-seven of the Revision of 1860, (Code of 1873, sec. 527), does not take away the right of counties to build bridges in incorporated cities and towns on public highways.||

Counties are not liable for injuries caused by defective bridges within the corporate limits of cities of the second class; § but for the non-repair of county bridges they are liable for injuries therefrom; a but the liability of counties for injuries caused by a failure to construct bridges or keep them in repair, extends to the larger class of bridges which

*43 Iowa, 193.

†Code of 1873, sec. 527; Laws of 1874, Chapter 5.

‡19 Iowa, 87; 21 Iowa, 119.

|| 21 Iowa, 144.

§ 21 Iowa, 409.

a 26 Iowa, 395, 264; 13 Iowa, 181; 32 Iowa, 328; 40 Iowa, 218.

require an extraordinary expenditure of money and are properly designated as county bridges.*

The fact that a part of the cost of building a county bridge was paid by voluntary contributions, and the money expended under the direction of others than agents of the county, will not take away the liability to keep said bridge in repair.†

Whether the approaches to a bridge constitute a part of the bridge proper or not, is a question of fact to be determined by the jury.‡

Wherever a county line road intersects a stream of sufficient width to require a county bridge, and the point of intersection does not afford a suitable site for the construction of such bridge, and there is a good site for the erection of a bridge wholly within one or the other of said counties, at a reasonable distance from the county line, the boards of supervisors of the respective counties to be benefitted by said bridge may make the necessary appropriations for the construction and maintenance of such bridge, the same as they might do if said bridge was located on county line.||

XVII. TOLL BRIDGES.

The board of supervisors have power to grant licenses for toll bridges across any water course or other obstacles which justify the establishment of the same; which license may continue for a period not exceeding fifty years, and may stipulate that no other bridge shall be permitted to cross the same obstruction within not exceeding two miles from such bridge.

They shall have power to fix the rates of toll, and to regulate said bridges so as to allow persons to pass at any time.

In granting licenses, preference must be given to the keeper of the previous bridge at the same point, or if it be a new bridge, preference shall be given to the owner of the land.

The licenses must be entered upon the records of the board of supervisors, and shall contain the rates of toll allowed, and the rates must be conspicuously posted up at the extremity of the bridge, or some other conspicuous place near by; and a failure to do so will justify any person in refusing to pay the toll, and if habitually, the proprietor shall be liable to pay twenty-five dollars.

* 26 Iowa, 264; 40 Iowa, 295, 394.

† 40 Iowa, 399.

‡ 40 Iowa, 398.

|| Laws of 1878, Chapter 40.

The proprietor may establish rules for the regulation of teams so passing over said bridge; and any person who refuses to pay the regular tolls established and posted up in accordance with the provisions of this chapter, or who shall run through or pass around the toll gates with a view of avoiding the payment of just tolls and dues, when the rates have been posted up as required by law, shall forfeit five dollars, together with costs of suit, for every such offense.*

The provisions relating to ferries are alike applicable to toll bridges, unless otherwise specified.†

XVIII. FERRIES.

The board of supervisors have power to grant licenses for ferries across any water course or other obstruction which justifies the same, which may continue for a period not exceeding ten years, and may stipulate that no other ferry shall be kept within one mile in either direction from said ferry, except it is made to appear to the board that the public good requires both ferries, after giving the holder of such license twenty days' notice.

They may prescribe rates of ferriage and the hours of the day and night during which such ferry must be attended, both of which may be changed by the board at their discretion.

Preference must be given to the owner of a previous ferry, or if a new one, the owner of the land at the point where the ferry is to be kept, if the board think either of such to be the proper person, otherwise any other proper person may have such privilege.

When the opposite shores of a stream are in different counties, either county may grant such license, and the county first exercising the jurisdiction retains the same during the term of such license. When but one side of the river is in this state, the boards have control over the shore in this state the same as if the river was wholly in this state.

Every ferryman shall be required to give bond in a penalty not less than one hundred dollars, for the faithful performance of his duties according to law and the rules prescribed; he must transport the public expresses of the United States and of this state, and the United States mail at any hour of the day or night.

* Code of 1873, Title VII., Chapter 3.

† See Title Ferries, next page.

The law relating to toll bridges is alike applicable to ferries, unless the same is otherwise provided.*

Such franchises are subject to execution, together with all material, implements, rights of way and works of whatever kind ordinarily used in their exercise, and the purchaser may take immediate possession.

Nothing contained in this chapter shall prevent the establishment of a free ferry by any person or corporation, nor from mill owners from crossing themselves or customers free of charge.†

A public ferryman is a common carrier, and subject to the same duties and responsibilities,‡ which makes them liable under all circumstances, subject only to the contingencies arising from the act of God or public enemies.¶ He is bound to keep his boat in running order and proper condition, and is liable (without a reasonable cause) for damages resulting from his failure thereof, which may be both to a city for the violation of an ordinance, and to the individual sustaining such damages.§

A ferry license is not vacated by the death of the party to whom the license was issued, but passes to his representatives.

An appeal does not lie from the action of the board of supervisors in refusing to grant a ferry license, but the vacation of a license by the board of supervisors is a decision from which an appeal will lie.α

XIX. OBSTRUCTING, DEFACING, OR INJURING PUBLIC HIGHWAY, PUNISHED.

If any person, without authority or permission from the proper road supervisor, shall in any manner obstruct, deface, or injure any public road or highway by breaking up, or plowing, or digging within the boundary lines thereof, he shall, upon conviction, be punished by a fine of not less than five dollars nor more than twenty-five dollars, or by imprisonment in the county jail not more than thirty days, at the discretion of the court.β

*See title Toll Bridges.

†Code of 1873, Chapter 3, title 7.

‡23 Iowa, 90.

¶ Greenleaf on Evidence, vol. 1, §218; 18 Iowa, 555.

§22 Iowa, 90; 27 Iowa, 460.

α 25 Iowa, 445.

β Chapter 17, Laws of 15th General Assembly.

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(NOTE.—Under the head “Highways” and “Highway Supervisors,” will be found a complete Index to the laws referring to the establishment and working of highways, including the election, qualification, powers and duties of Supervisors, all arranged in detail under proper heads and sub-heads, rendering it easy to refer to any given subject connected therewith.)

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